IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5392 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMAIL RASULBHAI GHANCHI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 5392 of 2000
   MR MURALI N DEVNANI for Petitioner No. 1
   MR HC PATEL, AGP for Respondents No. 1,3
   MR ANANT S DAVE for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/03/2002

ORAL JUDGEMENT

Rule. Mr HC Patel, learned AGP waives service of Rule for respondent Nos. 1 and 3. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. By resolution dated 16.9.1996, Radhanpur Municipal Borough (hereinafter referred to as `the Municipality') granted land admeasuring 63.75 sq.mtrs. in Radhanpur town on lease to the petitioner for a period of 9 years at a monthly rent of Rs. 30/-. However, in view of the report submitted by the Chief Officer of the Municipality, the Collector passed order dated 30.12.1996 staying the resolution passed by the Municipality. That order of the Collector was challenged by the petitioner before this Court in Special Civil Application No. 2553 of 1997. By judgment dated 24.11.1997, this Court allowed the petition and quashed the order dated 30.12.1996 of the Collector on the ground that the same was passed without giving an opportunity of hearing to the petitioner. This Court also directed the Collector to give the petitioner an opportunity of being heard before passing the final order in the matter.

Thereafter, the Collector heard the petitioner and passed the impugned order dated 21.12.1999 which is at Annexure "A" to the petition. It is that order which is under challenge in this petition.

3. Mr MN Devnani, learned counsel for the petitioner submits that the impugned order is illegal because it is passed on a misconception of law that prior permission of the State Government was required before granting the lease in question. It is further submitted that the impugned order is passed on the basis of irrelevant considerations.

4. On the other hand, Mr HC Patel, learned AGP for the Collector, Patan submits that the order is a self-contained order giving reasons why the impugned order was passed. The Chief Officer, Radhanpur had submitted a report that the land in question was very valuable and the Municipality itself could construct shops thereon and that the land was near a public street and, therefore, the resolution could not have been passed by the Municipality without the Govt.'s prior permission.

5. Having heard the learned counsel for the parties, it appears to the Court that the Chief Officer of the Municipality had submitted his report on the assumption that the resolution of the Municipality was illegal because prior permission of the State Government was not obtained. Sub-section (1) of Section 65 of the Gujarat Panchayats Act, 1993 provides that it is open to a Municipality to sell, lease or otherwise transfer any moveable or immoveable property vested in the

Municipality or acquired by it. Sub-section (2) of Section 65 of the Act provides that previous permission of the State Government is required in the following cases :-

(i) where the Municipality grants on lease the land which forms a part of any public street;

(ii) where the Municipality grants any lease of land for a period exceeding 10 years;

(iii) where the Municipality sells, transfers or leases out any property where the value of the property exceeds Rs. 1 lac.

It is not the case of any of the respondents that the land in question forms a part of the public street nor is it their case that the lease is granted for a period exceeding 10 years. On the contrary, the resolution itself states that the lease is granted for a period of 9 years.

Coming to the third contingency, it is not mentioned in the impugned order that the market value of the land was assessed at Rs. 1 lac or more. The land in question is a piece of land admeasuring 63.75 sq. mtrs. in Radhanpur town in Patan District. The Court can take judicial notice of the fact that Patan District is not one of the well developed districts and that Radhanpur is not a big commercial town where the value of the land would exceed Rs. 1500 per sq.mtr. In this view of the matter, the Court does not think it to be a fit case to remand the matter to the Collector for consideration of the question whether the value of the land exceeds Rs. 1 lac. In fact, the land was given on lease by the Municipality to the petitioner for residential purpose, and according to the petitioner, the petitioner has constructed a residential premise on the said land and the petitioner is using the same only for residential purpose.

In this view of the matter, it is not possible to hold that prior permission of the State Government was required before the Municipality granted the land on lease to the petitioner for a period of 9 years.

6. The only other fact which was referred to by the Chief Officer in his report was that the land was valuable and could be utilized by the Municipality itself by constructing shops and possibly letting them out.

Apart from the fact that the land in question is only about 67 sq. mtrs., the fact remains that the lease in question has been granted only for a period of 9 years i.e. from July, 1996. The period of 9 years would, therefore, come to an end by efflux of time in July, 2005. At that point of time, it would be open to the Municipality to consider the matter afresh and decide whether the Municipality should grant the lease of the land and it would be at that point of time that it will be necessary to consider whether previous permission of the State Government would be required on the ground that the total period of lease may exceed 10 years computed from July, 1996.

7. Subject to the aforesaid observations, the impugned order dated 21.12.1999 at Annexure "A" to the petition is quashed and set aside.

Rule is made absolute with liberty to the respondents to take a fresh decision when the period of lease expires in July, 2005.

(M.S. Shah, J.)

sundar/-